

Freedom Is History (and Vice Versa): Stop the Presses COLUMN | December 10, 2001

ERIC ALTERMAN -- The Nation

Now that we know that Al Gore not only beat George Bush by roughly 537,000 votes nationally, but also handily defeated him among legally cast votes in Florida, I suppose we can expect accelerated efforts on the part of the President to try to counter his proven political illegitimacy. This is actually a pretty frightening notion. Well before we received the much-misreported results of the Florida recount, the Administration gave every indication of being so addicted to secrecy that it would happily stretch the bounds of democratic accountability beyond their breaking point.

This tendency was evident even pre-9/11--for instance, when Dick Cheney refused repeated Congressional demands that he identify the lobbyists crafting the Administration's multibillion-dollar giveaway to the oil and gas industry. (Oddly, the journalistic holy warriors who demanded that Hillary Clinton do just that during the crafting of her ill-fated healthcare plan have remained remarkably understanding this time around.) Osama bin Laden's terrorism has now given Bush & Co. an excuse to try to close off virtually every possible avenue of inquiry from those who seek to question their policies.

Among the highlights so far are: a decision to jail more than 1,000 people, without charge and without explanation; an executive order allowing secret military tribunals for immigrants accused of involvement in the still-undefined crime of terrorism; an attempt by John Ashcroft to emasculate the Freedom of Information Act; and an order to clamp down on information available from military contractors, from government websites and even information given to Congress.

While some new security measures are obviously necessary, the Bush people's zeal to shut down the free flow of information goes well beyond any legitimate need. Consider November's Executive Order 13233, which eviscerates the nation's access to its own history, effectively overturning the Presidential Records Act (PRA) of 1978 by fiat.

Current law insists that all presidential papers be declassified within twelve years, with an exception made for those whose publication could demonstrably affect our national security. Bush now wants to allow Presidents to refuse to declassify the decision-making process virtually forever. And he wants to do this regardless of whether the ex-President in question wants his papers released. This is a catastrophe not only for historians but also for history. The secrecy it enshrines can only invite future Watergate- or Iran/contra-style abuses.

The obvious target of the new law is the Reagan papers. For the past nine months, Reagan's people have refused--with the Bush Administration's backing--to release more than 68,000 pages they owe the nation under the 1978 law. The Bush Administration is filled with Reagan-era retreads whose questionable actions might leave them vulnerable to criticism and/or ridicule. Among these are Elliott Abrams, John Negroponte, Otto Reich as well as Colin Powell, budget director Mitch Daniels Jr. and Chief of Staff Andrew Card. And then there's the matter of Reagan's Vice President, who, like Abrams et al., lied about his awareness of the

commission of Iran/contra crimes.

The outrageousness of Bush's action is matched only by the blithe indifference with which he apparently expects to carry it off. He claims that his executive order insures "a process that I think will enable historians to do their job." Call me a cynic, but this looks like yet another situation where the guy can't possibly be as clueless as he pretends.

As Scott Nelson of Public Citizen recently testified, the new order gives any sitting President unregulated power to prevent the US Archivist from releasing any materials to the public simply by making a claim of privilege, however indefensible. It reverses the burden of proof by putting it on the historian and demands that "a party seeking to overcome the constitutionally based privileges that apply to Presidential records must establish at least a 'demonstrated, specific need' for particular records, a standard that turns on the nature of the proceeding and the importance of the information to that proceeding."

The Bush order also demands that the Archivist alert both the former President and the incumbent President of requests for access to presidential records subject to the PRA and provide them with copies of the relevant records upon their request. They can then review these documents, with the de facto ability to hold up their release indefinitely, even if the incumbent President disagrees. Steven Aftergood of the Federation of American Scientists points out that the new order creates a brand-new category of executive privilege, one belonging to a Vice President or family member of a deceased President. It will therefore allow W to protect HW's papers long after Poppy joins Grandpa Prescott in that Grand Old Connecticut Prep School in the Sky.

Keep in mind that Bush is professing to issue all these restrictions on the basis of current law. As Democrats Henry Waxman and Jan Schakowsky note in a letter to the President, this assertion could hardly be more disingenuous. The Bush order, they argue, "tries to rewrite the Act by withholding records that are a part of the deliberative process." With zero legislative basis, they complain, it wrests authority for the disposition of the papers from the Archivist to the sitting President and misuses the provisions of the Freedom of Information Act, deliberately undermining its intentions.

I happened be in Independence, Missouri, when the order was issued, doing research at the Truman Library for my dissertation and my next book, on the consequences of presidential deception. The staff was knowledgeable and professional, entirely disinterested in the nature of my prospective arguments. Reading the actual telegrams and memos that document the outbreak of the cold war added immeasurably to my understanding of the challenges our leaders then faced. If George W. Bush has his way, such research and the truths that emerge from it will themselves become part of history--and with them, a small piece of our freedom.